

FROM THE COMMITTEE ON MODEL CIVIL JURY INSTRUCTIONS

The Committee solicits comment on the following proposal by October 15, 2017. Comments may be sent in writing to Timothy J. Raubinger, Reporter, Committee on Model Civil Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCJI@courts.mi.gov.

PROPOSED

M Civ JI 3.03 Admission of Evidence

~~The evidence you are to consider consists of testimony of witnesses *(and exhibits offered and received) ** (and your view of the [premises / scene / object]).~~ When you discuss the case and decide on your verdict, you may only consider the evidence that has been admitted in this case. Evidence includes only the sworn testimony of witnesses [, the exhibits admitted into evidence, and anything else I told you to consider as evidence]. The admission of evidence in court is governed by rules of law. From time to time it has been my duty as judge to rule on the admissibility of evidence. You must not concern yourselves with the reasons for these rulings, and you must not consider *(any exhibit to which an objection was sustained or) any testimony *(or exhibit) which was ordered stricken.

Note on Use

*Omit the references to exhibits if there are no exhibits.

**The phrase in parentheses should be read to the jury if the court has permitted a jury view and has determined that the view constitutes evidence. Appropriate designation of the kind of view may be selected instead of the bracketed words. If the court determines that the view is not evidence, this phrase in parentheses should not be read, and in lieu of it M Civ JI 3.12 should be given.

Michigan cases are in conflict on whether a jury view constitutes evidence. Generally the jury can consider information obtained by them from the view only to assist them in understanding evidence presented in open court, *Valenti v Mayer*, 301 Mich 551; 4 NW2d 5 (1942); but in some cases, the view itself may be evidence. *Sunday v Wolverine Service Stations*, 265 Mich 19; 251 NW 402 (1933).

Comment

Although some rulings on evidence are made out of the jury's hearing, the great bulk of such rulings are made in the presence of the jury, who hear not only the reasons for objections but often the reasons for rulings as well. Whether offered evidence is

admitted or excluded, the jury may be influenced by what it hears, and, consequently, it is proper to tell them of the Court's duty in these matters and admonish them to ignore stricken or excluded evidence and the reasons for the rulings.

History

M Civ JI 3.03 was SJI 1.01(4). Amended January 1992.

The Michigan Supreme Court has delegated to the Committee on Model Civil Jury Instructions the authority to propose and adopt Model Civil Jury Instructions. MCR 2.512(D). In drafting Model Civil Jury Instructions, it is not the committee's function to create new law or anticipate rulings of the Michigan Supreme Court or Court of Appeals on substantive law. The committee's responsibility is to produce instructions that are supported by existing law.

The members of the Committee on Model Civil Jury Instructions are:

Chair: Hon. Mark T. Boonstra
Reporter: Timothy J. Raubinger
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